

OGC Has Reviewed

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RETURN TO OS REGISTRY

10 JUN 1976

MEMORANDUM FOR: Assistant for Information, DDA
Chief, Operations Staff, DDO
Executive Officer for DOSCT
Assistant for NCS and NFIB Affairs, DDI

FROM

: [REDACTED]
Alternate CIA Member
DCI Security Committee

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SUBJECT

: Proposed DCID 1/19, NonDisclosure
Agreements for Intelligence Sources
or Methods Information

1. On 27 May 1976, the proposed DCID 1/19 was circulated to National Foreign Intelligence Board (NFIB) members for vote sheet action. The proposed DCID was developed as an implementing policy for the provisions of Section 7(a) of Executive Order 11905 by an ad hoc working group of the DCI Security Committee.

2. The proposed directive had been previously coordinated throughout this Agency, including senior representatives of each Directorate and the Office of General Counsel (OGC). However, additional review by OGC in the past week has identified a possible problem with respect to the labeling requirement of the proposed policy. This requirement is described in paragraph 3 of the proposed DCID.

3. The Office of General Counsel has described the problem and suggested a solution as follows:

"In order that the marking of information to be protected by the proposed DCID not be confused with that information currently being protected by the classification system (Executive Order 11652, as amended), the marking proposed in paragraph 3 of the proposed DCID should be different from that associated with the classification system. I note that the National Security Council Directive of

May 17, 1972 Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information uses the notice "WARNING NOTICE - SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED" for classified information or material relating to sensitive intelligence sources and methods. 3A CFR, 1972 COM, p. 237. A different notice such as "WARNING - THIS DOCUMENT CONTAINS INTELLIGENCE SOURCES AND METHODS PROTECTED FROM UNAUTHORIZED DISCLOSURE PURSUANT TO 50 U.S.C. 403" or "WARNING - INTELLIGENCE SOURCES AND METHODS PROTECTED BY 50 U.S.C. 403 CONTAINED HEREIN" seems appropriate. Of particular importance is that such notice should not be limited by a term such as "SENSITIVE." Such a term could add to the burdens of proof that a court could impose on the Government in any case that may involve materials with such markings. Establishment of such a new warning notice will require a new abbreviation for "WN INTEL." Such might be "WISM." Thus, the next to last sentence in paragraph 3 relating to DCID No. 1/7 of the proposed DCID should be revised. Possibly it should simply state that "for special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated 'WISM'." I recognize that at least temporarily this may add an additional marking to many documents which are otherwise classified, however, this Office believes it important from a legal point of view that the two warning notices be cast in different language. It seems appropriate to consider the elimination of the WARNING NOTICE that is required by the classification system. A suggestion for such will be made to the NSC 229 Group.

4. In view of the problem cited above, OSC proposes that in the NFIS coordination process the Agency should concur in the publication of the proposed DCID on condition that the wording of the warning notice outlined in paragraph 3 of the Directive be changed to make it distinct from the warning notice currently in use and authorized by the National Security Council Directive of May 1972, implementing Executive Order 11652.

5. It is called to your attention that establishment of a new marking in line with the OGC suggestion would not remove the requirement for the current warning notice and many documents would need both caveats.

6. Before presenting the Agency position on the proposed DCID to the CIA Member of NFIB, I would appreciate your reaction to the OGC proposal. If there is internal Agency disagreement on this issue, I would propose that we resolve it before solidifying the Agency's position, and I will make arrangements to discuss the matter in a group with the CIA Member of NFIB.

7. My apologies for the short deadline on this issue, but in view of the fact that the vote sheet action was due on 9 June, I would appreciate your response as soon as possible.



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Att.

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OS/C/PPG/[REDACTED]:ml 10 Jun 76

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